

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the E-rate Program)	WC Docket No. 13-184
For Schools and Libraries)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

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Competitive Carriers Association (“CCA”) hereby submits comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued in this proceeding.¹

INTRODUCTION AND SUMMARY

CCA applauds the Federal Communications Commission’s (“FCC” or “Commission”) efforts to reform the E-rate program to provide schools and libraries with improved access to high-speed broadband connections. CCA also supports the overarching goals of the NPRM, including “(1) ensuring schools and libraries have affordable access to 21st Century broadband that supports digital learning; (2) maximizing the cost-effectiveness of E-rate funds; and (3) streamlining the administration of the E-rate program.”² Nonetheless, there is a fundamental disconnect between the policy goals underlying the Commission’s modernization of its E-rate program and the specific proposals set out in the NPRM.

First, the Commission is on the precipice of making the same mistakes that have hampered the success of the high-cost support program. Similar to its reform of the high-cost universal service program, the Commission in this NPRM prioritizes wireline services over wireless. It does so despite consumers’ increasing preference for mobile wireless services and

¹ *Modernizing the E-rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, WC Docket No. 13-184, FCC 13-100 (rel. July 23, 2013).

² NPRM ¶ 12.

considerations of efficiency and cost-effectiveness, thus frustrating core objectives underlying the universal service programs.

As the Commission develops new performance requirements for the E-rate program, it should, at a minimum, establish objective metrics that make funding available on equal terms to qualifying carriers, without regard for their chosen technology. While current-generation wireless networks will not support the gigabit speeds that the Commission hopes to foster in the future, nor do most wireline carriers' existing networks. Even today, wireless carriers are providing competitive services to E-rate funding recipients. The Commission should encourage innovation and performance enhancements on *all* platforms, capitalizing on market forces rather than picking winners and losers.

By the same token, when schools and libraries weigh competing providers' proposals and make their selections, they should be given the ability to assess which provider best satisfies their communications needs in the most-cost effective manner. Schools and libraries should be free to consider all factors, not just "speed", when deciding which provider best suits their needs, such as the benefits of mobility and how services purchased by anchor institutions can be leveraged for the students' and communities' benefit outside of the confines of the classroom or library. In this regard the Commission fails to consider the many CCA member E-rate successes or the innovative projects coming out of its E-rate Deployed Ubiquitously pilot program. If the Commission is serious about reform, it must consider these mobile success stories and possibly expand the E-rate Deployed Ubiquitously pilot program.

DISCUSSION

A. THE COMMISSION SHOULDN'T DISPROPORTIONATELY FAVOR WIRLINE OVER WIRELESS TECHNOLOGY, AS PROPOSED IN THE NPRM

The NPRM evidences a bias towards fiber technology, as opposed to considering technology-neutral rules that enable all industry segments to compete on an equal footing for E-rate funds. The Commission has traveled a similar path in awarding high-cost USF support, and doing so again as part of its E-rate reform would lead to similar inequitable results.

As CCA has documented, the Commission made a serious misjudgment when it reformed the high-cost support mechanisms by implementing rules that include overt preferences for incumbent local exchange carriers (“ILECs”).³ The Commission effectively barred wireless carriers from competing on equal footing for high-cost funding, as it reserved the overwhelming majority of the annual \$4.5 billion funding budget for price-cap and rate-of-return ILECs, despite widespread consumer preferences for mobile services and evidence that wireless technologies in many instances provide the lowest-cost solutions for reaching high cost areas. Even after price-cap ILECs refused to accept \$185 million of the \$300 million that was initially made available,⁴ despite an inflated subsidy of \$775 per line,⁵ the Commission’s response was to make at least \$300 million in *additional* funding available this year while watering down the applicable

³ See, e.g., Comments of Competitive Carriers Association, WC Docket No. 10-90 (filed Jan. 28, 2013).

⁴ See Press Release, FCC, *FCC Kicks-Off ‘Connect America Fund’ with Major Announcement: Nearly 400,000 Unserved Americans from Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years* (July 25, 2012), available at http://thedcoffice.com/late_releases_files/07-25-2012/DOC-315413A1.pdf (describing initial decisions of price cap carriers refusing \$185 million of \$300 million in available funding).

⁵ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 144, 159 (2011) (“CAF Order”).

performance requirements.⁶ The Commission thus has appeared willing to shovel money toward price-cap ILECs based only on minimal performance commitments, while continuing to phase down the high-cost funding available to wireless carriers. Making matters worse, the Commission thus far has refused to modify its plans for Phase II of the Connect America Fund program, which is set to give price cap ILECs an exclusive right of first refusal with respect to an additional \$1.8 billion in annual funding, relegating wireless carriers to participate in reverse auctions covering whatever scraps the ILECs decline.⁷ The inevitable result of technology preferences is to sacrifice the efficiency and cost-effectiveness that were intended to be hallmarks of the reform effort, while making only a minimal dent in the unserved population.

As the Commission embarks on a new effort to update the E-rate program, it should make sure it does not repeat these critical errors. The Commission cannot “maximize the cost-effectiveness of E-rate funds” unless it allows all carriers to compete without regard to their technology platform.⁸ The NPRM correctly recognizes that “funds available for the E-rate program come from contributions made by consumers and businesses to the USF, and the Commission has a responsibility to ensure they are spent effectively.”⁹ But the funds cannot be spent effectively if the rules deny wireless providers meaningful opportunities to compete, even where they offer lower-cost alternatives that have comparable performance capabilities.

⁶ See Press Release, FCC, *Up to 600,000 Rural Homes and Businesses in 44 States and Puerto Rico Will gain Access to Broadband for First Time* (Aug. 21, 2013) (describing results of latest decisions by price cap ILECs to accept Phase I CAF support).

⁷ See CAF Order ¶¶ 158-78, 103-04.

⁸ NPRM ¶ 41.

⁹ *Id.*

Certain aspects of the NPRM already suggest an explicit or implicit bias against wireless carriers. The NPRM expressly asks whether the Commission should “prioritize fiber connectivity over other types of broadband connectivity,”¹⁰ without demonstrating why a preference for any particular technology is necessary to achieve the goals of the E-rate program. The NPRM also asks whether “fiber connections generally [are] the most cost effective and future proof” technology, and whether “point-to-point microwave and coaxial cable” might be potential alternatives,¹¹ while only considering “fixed wireless solutions” in the context of “small rural and Tribal schools and libraries.”¹² But there is no sound reason why *any* schools or libraries should be foreclosed from selecting wireless services where those offerings best suit their needs and provide cost-effective solutions, or why the Commission should decide today to relegate wireless solutions to rural and Tribal areas for the foreseeable future. The NPRM’s approach to technology preferences is especially problematic because the Commission has recognized that schools and libraries need “greater flexibility” to select “the most cost-effective broadband services.”¹³ A preference for one particular technology is inconsistent with the goal of providing schools and libraries with greater flexibility. The Commission accordingly should, at a minimum, set objective, technology-neutral benchmarks that carriers can meet to qualify for E-rate funds.

To be sure, wireless technologies today may not meet the most aggressive performance goals that the Commission seeks to achieve. But that is equally true of many existing wireline

¹⁰ NPRM ¶ 77.

¹¹ *Id.* ¶ 67.

¹² *Id.* ¶ 68.

¹³ *Id.* ¶ 10.

networks. There is no legitimate basis to foreclose participation by any technology platform or industry segment, as the Commission can achieve its goals by establishing objective and technology-neutral performance benchmarks. Although current LTE networks and comparable wireless technologies are not yet capable of meeting President Obama's ConnectED goal of delivering "at least 100 Mbps service with a target of 1 Gbps service to most schools and libraries within 5 years,"¹⁴ embedding technology preferences in the Commission's rules would undermine the public interest in two distinct respects.

First, the Commission should not discount or discourage the prospect of technical advancements that may allow wireless carriers to deliver far greater speeds in the not-too-distant future. For example, the Commission recently initiated a proceeding to make additional spectrum available in the 5 GHz band to enable the deployment of wideband services utilizing the new 802.11ac Wi-Fi standard, which will be capable of supporting gigabit speeds.¹⁵ In addition, as carriers re-farm existing spectrum and bring new bands online, their LTE networks will support far greater speeds over time. The Commission should seek to ensure that schools and libraries can take advantage of such developments, rather than risking any rule biases that would limit program beneficiaries' options.

Second, although the Commission laudably wants to promote broadband speeds in excess of 100 Mbps, there will undoubtedly be schools and libraries (including, but not limited to, those in rural areas) that will continue to prefer lower-cost (and thus lower-speed) offerings for many purposes for the foreseeable future. Forcing schools and libraries to over-provision would

¹⁴ NPRM ¶ 22.

¹⁵ *See Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, Notice of Proposed Rulemaking, ET Docket No. 13-49 ¶ 18 (Feb. 20, 2013).

undercut the Commission’s stated interest in promoting cost-effectiveness, and adopting rules that steer those customers to particular providers would have a similarly detrimental impact.

The key takeaway—especially against the backdrop of the distortions caused by wireline preferences embedded in the high-cost support rules—is that the Commission should adopt objective rules at the outset. Indeed, it makes far more sense to apply neutral rules *ex ante* than to adopt technology preferences that force USAC to retrofit such provisions *ex post* in an effort to make the system more efficient. In addition to ensuring that any new E-rate rules are competitively and technologically neutral, the Commission should review (and, to the extent necessary, revise) its eligible services list with an eye toward eliminating unnecessary technology preferences.

B. THE COMMISSION SHOULD CONSIDER EXPANDING ITS EDU PILOT PROGRAM

As noted above, the NPRM considers fixed wireless solutions as a possible option for small rural and Tribal schools and libraries due to costs and availability of deploying fiber to these locations,¹⁶ but it fails to weigh both the benefits that wireless technology bring to bear in facilitating learning-on-the-go and the successes of the Commission’s recent E-Rate Deployed Ubiquitously (“EDU”) pilot program.

While the Commission is aware of the growing “broadband gap” that exists both in rural areas¹⁷ and among impoverished and minority communities,¹⁸ wireless technology is helping to

¹⁶ NPRM ¶ 68.

¹⁷ See, e.g., Hanns Kuttner, Hudson Institute, *Broadband for Rural America: Economic Impacts and Economic Opportunities* 18 (Oct. 2012), available at <http://www.hudson.org/files/publications/RuralTelecom-Kuttner--1012.pdf> (noting that “the Internet has . . . brought new education opportunities . . . and [] offered a strengthened sense of community,” that “rural America stands at a precipice” and that

bridge some of these deficiencies.¹⁹ The E-rate program (as currently structured) is helping to provide fixed broadband service inside of schools and libraries. For example, T-Mobile is currently working with educational partners to provide netbooks to students which automatically update electronic textbooks, and which facilitate online testing—providing up to date teaching tools and freeing up time educators otherwise spend grading traditional paper exams.

But many students, including those in rural areas and impoverished communities, often lose connectivity and thus their ability to utilize digital learning tools when they leave schools and libraries, putting them at a disadvantage to their counterparts who continue to have access to mobile broadband services.²⁰ In a recent Pew Internet poll, 79 percent of teachers reported allowing students to access assignments online, and 76 percent of teachers reported allowing

“without broader access to broadband capacity, rural America will lack one of the necessary tools to contain, if not narrow, the gap.”).

¹⁸ U.S. Census Bureau, Pub. No. P20-569, *Computer and Internet Use in the United States: Population Characteristics* 2, 5 (May 2013) (Census Study) (noting that “[h]ousehold Internet use has also historically varied across demographics such as race and ethnicity. In 2011, 76.2 percent of non-Hispanic White households and 82.7 percent of Asian households reported Internet use at home, compared with 58.3 percent of Hispanic households and 56.9 percent of Black households” and that “[p]revious research has shown that computer ownership and Internet use are both strongly associated with income.”) (citations omitted).

¹⁹ *Id.* at 12 (“When compared to percentages of home Internet use, smartphones appear to be leveling the Internet use disparities traditionally present for race and ethnicity groups. While 27 percentage points separated the highest and lowest reported rates of home Internet use . . . a smaller gap of 18 percentage points emerged once smartphone use was factored into overall connectivity rates . . .”).

²⁰ See, e.g., Anton Troianovski, *The Web-Deprived Study at McDonald’s*, Wall St. J., Jan. 29, 2013, at A1 (noting that “in many rural areas, high-speed Internet through traditional phone lines simply isn’t available at any price” and how the availability of affordable mobile broadband services is helping to bridge the digital divide).

students to submit assignments online.²¹ But saliently, while 54 percent of teachers said all or almost all of their students have sufficient access to digital tools *at school*, only 18 percent said that all or almost all of their students have access to the digital tools they need *at home*.²² What's more, teachers of the lowest income students were the *least* likely to say their students have sufficient access to the digital tools they need, both in school *and at home*.²³

A recent report from *USA Today* provides a microcosm example. More than-two thirds of low-income families in South Carolina don't have a high-speed internet connection, and overall only 57 percent of households in the state have broadband access.²⁴ This lack of access to home broadband connections has deterred South Carolinian educators from assigning web-based homework and exploring other innovative learning techniques outside of school hours.²⁵ As one administrator sadly put it, “students who have access to technology at home know how to access that technology to explore their natural curiosity[.] Students who do not have access to this technology at home, while they may have the curiosity, do not have the means to access it.”²⁶

Not too long ago, the Commission took steps to begin addressing these disparities. Specifically, in September 2010, the Commission launched the EDU pilot program to investigate

²¹ Kristen Purcell *et al.*, Pew Internet & American Life Project, *How Teachers are Using Technology at Home and in their Classrooms* 3 (Feb. 28, 2013).

²² *Id.*

²³ *Id.*

²⁴ Ron Barnett, *Rise of Internet Learning Creates Digital Divide*, *USA Today* (Feb. 18, 2012), available at <http://www.usatoday.com/story/news/nation/2013/02/16/internet-learning-creates-digital-divide/1925189/> (last accessed Sept. 12, 2013) (“*Internet Learning Digital Divide*”).

²⁵ *Id.*

²⁶ *Id.*

the merits and challenges of wireless off-premises connectivity services for mobile learning devices, and to help determine whether and how those services should ultimately be eligible for E-rate support.²⁷ As part of the EDU pilot program, the Wireline Competition Bureau awarded approximately \$9 million for the 2011-2012 funding year to 20 “innovative, interactive off-premise wireless connectivity projects” across 14 states, through a highly competitive application process engaged in by schools and libraries.²⁸

Following submission of interim reports, one award recipient concluded:

In a short period, [Learning-on-the-Go] organizations have presented evidence of students’ improving achievement, staying in school instead of dropping out, feeling more confident in mathematics, taking ownership for their learning, and showing an increased interest in college. Furthermore, schools and communities see greater communication with parents who speak a foreign language, and improved professional development opportunities for community members to improve their technology skills and seek employment.²⁹

Other school administrators agree, noting that “4G LTE technology offers the most promise for bridging the digital divide.”³⁰ In Greenville, South Carolina, the school administration recognizes that, were the Commission’s EDU pilot program expanded, it could help to put high-speed, mobile broadband access into the hands of free-and-reduced-lunch

²⁷ See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6; GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18785-57 ¶¶ 44-50 (2010).

²⁸ See *E-rate Deployed Ubiquitously 2011 Pilot Program*, WC Docket No. 10-222, Order, 26 FCC Rcd 9526, 9526-27 ¶¶ 1, 3 (WCB 2011). Of note, the Bureau received 94 applications seeking approximately \$37 million in funding in response to its announcement of the pilot program. *Id.* at 9527 ¶ 4.

²⁹ San Diego County Office of Education, *Summary of Interim Reports Submitted by EDU 2011 Pilot Program Schools and Libraries*, CC Docket No. 02-6; WC Docket No. 10-222 at 10 (filed Apr. 20, 2012).

³⁰ See *Internet Learning Digital Divide*, *supra* note 24.

students.³¹ Indeed, there seemed to be an expectation that the Commission would adopt a permanent “learn-on-the-go” E-Rate program as a result of the pilot.³²

However, in spite of these notable successes, the Commission’s most recent NPRM barely mentions the EDU pilot program. There is also no discussion of the added benefits that mobile broadband solutions bring to schools, libraries and communities, or the importance of facilitating opportunities for education “anywhere, anytime.” As Sprint has noted, “to deny funding for wireless telecommunications and internet access services simply because the eligible user is not seated at a desk on campus or in the library, subverts the intent of the E-rate program and prevents applicants from realizing the full productivity benefits of wireless technology.”³³

In sum, CCA strongly encourages the FCC to consider the panoply of advantages of mobile wireless broadband and perhaps expand the EDU program for the benefit of all students, especially those in disadvantaged communities.

C. THE COMMISSION SHOULD MINIMIZE THE ADMINISTRATIVE BURDENS OF THE E-RATE PROGRAM

Finally, the NPRM also seeks to streamline and simplify the “application, review, commitment and disbursement processes” of the E-rate program.³⁴ CCA strongly agrees that the Commission’s reform of the E-rate program should strive for administrative simplicity. Overly complicated processes create significant disincentives to participation and impose unnecessary burdens on carriers. President Obama issued an executive order last year that appropriately

³¹ *Id.*

³² Marion Herbert, *E-rate Goes Mobile*, District Administration, Sept. 2011, *available at* <http://www.districtadministration.com/article/e-rate-goes-mobile> (last accessed Sept. 12, 2013).

³³ Comments of Sprint Nextel Corporation, CC Docket No. 02-6 at 2 (filed June 19, 2009).

³⁴ NPRM ¶ 46.

seeks to reduce “unjustified regulatory burdens and costs,” and urges federal agencies to carefully examine whether rules can be “modified or streamlined.”³⁵ The Commission should heed that directive by ensuring that the E-rate rules are no more burdensome than necessary, and in particular should focus on streamlining application and reporting requirements.

CONCLUSION

For the foregoing reasons, the Commission’s modernized E-rate rules should be competitively and technologically neutral and should give all carriers, including wireless carriers, an equal opportunity to compete for E-rate funds. Moreover, when developing those rules the Commission should be mindful of the expanded opportunities mobile wireless broadband beyond classrooms and libraries can provide to America’s youngest generations. And as a part of its revamp the Commission also should streamline the E-rate application and reporting procedures to minimize the burdens on carriers.

Respectfully submitted,

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³⁵ Executive Order – Identifying and Reducing Regulatory Burdens, (May 10, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/05/10/executive-order-identifying-and-reducing-regulatory-burdens>.